

Lauren A. Dean, Esq. (SBN 174722)
MAGNANIMO DEAN LAW, APC

5850 Canoga Avenue, Suite 400
Woodland Hills, CA 91367

Tel: (818) 305-3450

Email: lauren@magdeanlaw.com

Attorneys for Plaintiff

MICHAEL D. CELIO, SBN 197998
mcelio@gibsondunn.com

JAYVAN E. MITCHELL, SBN 322007
jmitchell@gibsondunn.com

GIBSON, DUNN & CRUTCHER LLP

1881 Page Mill Road

Palo Alto, CA 94304-1211

Telephone: 650.849.5300

Facsimile: 650.849.5333

MONICA K. LOSEMAN, SBN 309370
mloseman@gibsondunn.com

1801 California Street, Suite 4200
Denver, CO 80202-2642

Telephone: 303.298.5700

Facsimile: 303.298.5907

Attorneys for Defendants

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MICHAEL VALLIERES, Derivatively on
Behalf of AFFIRM HOLDINGS, INC.

Plaintiff,

v.

MAX LEVCHIN, JEREMY LIEW, LIBOR
MICHALEK, JENNY J. MING, CHRISTA S.
QUARLES, KEITH RABOIS, JACQUELINE
D. RESES, JAMES D. WHITE AND
MICHAEL LINFORD,

Defendants,

-and-

AFFIRM HOLDINGS, INC.,

Nominal Defendant.

Case No.: 3:22-cv-02507-VC

**JOINT STIPULATION AND
~~[PROPOSED]~~ ORDER TO STAY
DERIVATIVE ACTION**

Judge Vince Chhabria
Courtroom 5, 17th Floor

1 Plaintiff Michael Vallieres (“Plaintiff”), derivatively on behalf of Affirm Holdings, Inc.
 2 (“Affirm” or “the Company”), and Defendants Max Levchin, Jeremy Liew, Libor Michalek, Jenny
 3 J. Ming, Christa S. Quarles, Keith Rabois, Jacqueline D. Reses, James D. White and Michael Linford,
 4 (“Individual Defendants”) and with Affirm Holdings, Inc., Nominal Defendant, (collectively
 5 “Defendants”) and together with Plaintiff (collectively, the “Parties”) jointly submit this Stipulation
 6 to temporarily Stay the Derivative Action (“Stipulation”), and in support thereof state as follows:

7 WHEREAS, Plaintiff Vallieres filed an action captioned *Vallieres v. Levchin, et al.*, Civil
 8 Action No. 3:22-cv-02507 (N.D.Cal.) purportedly in the right, and for the benefit of Affirm against
 9 all Individual Defendants seeking to remedy Individual Defendants’ alleged breach of fiduciary
 10 duties, gross mismanagement, abuse of control, unjust enrichment, and against Defendants Levchin
 11 and Lindford for alleged violations of Section 10(b) and 21D of the Securities Exchange Act of 1934
 12 (“Exchange Act”), that it is alleged caused substantial harm to Affirm (the “Derivative Litigation”);

13 WHEREAS, pending in the United States District Court for the Northern District of California
 14 is a putative securities class action captioned *Toole v. Affirm Holdings, Inc.*, Civil Action No.: 3:22-
 15 cv-01243 (the “Securities Litigation”);

16 WHEREAS, there is an apparent overlap between the facts and circumstances alleged in the
 17 Derivative Litigation and the Securities Litigation, including the potential relevance of many of the
 18 same documents and witnesses;

19 WHEREAS, Affirm and Levchin, named defendants in the Derivative Litigation, are also
 20 named as defendants in the Securities Litigation (the “Securities Litigation Defendants”);

21 WHEREAS, the Securities Litigation Defendants anticipate filing a motion to dismiss for
 22 failure to state a claim;

23 WHEREAS, in order to ensure economy of time and effort for the Court, for counsel, and for
 24 litigants, Plaintiff and Defendants have agreed that, in light of the apparent overlap between the facts
 25 alleged in the Derivative Litigation and the Securities Litigation, and that the outcome of the
 26 anticipated motion to dismiss in the Securities Litigation may inform the proceedings in the
 27 Derivative Litigation, that the Derivative Litigation should be temporarily stayed on the terms set
 28 forth below unless and until either (1) the Securities Litigation is dismissed, with prejudice, and all

1 appeals related thereto have been exhausted; or (2) the motion to dismiss the Securities Litigation is
2 denied; or (3) either of the Parties to this Stipulation gives a ten (10) day notice that they no longer
3 consent to the voluntary stay of the Derivative Litigation.

4 WHEREFORE, the Parties, through their undersigned counsel, hereby agree, stipulate, and
5 respectfully request that the Court enter an order as follows:

6 1. All Defendants hereby accept service of the complaint filed in the Derivative Action.

7 2. The Derivative Litigation shall be stayed upon the Court's endorsement of this
8 Stipulation as an Order of the Court.

9 3. Defendants shall promptly notify Plaintiff upon becoming aware of any derivative
10 actions or threatened derivative actions, including, but not limited to, Section 220 demands or
11 litigation demands that appear in Defendants' good faith judgment to be related to the Derivative
12 Litigation.

13 4. The Parties agree that if the plaintiff in any related derivative action refuses to agree
14 to a stay under similar terms, Plaintiff may lift the agreed stay upon ten (10) days' notice in writing
15 to the undersigned Counsel for Defendants via email.

16 5. The Parties agree that during the pendency of this stay, Defendants shall inform
17 Plaintiff promptly upon the scheduling of any mediation or settlement negotiation with the plaintiff
18 in the Securities Litigation. In the event that Defendants are unable for any reason to include Plaintiff
19 in the mediation with plaintiff in the Securities Litigation, then Defendants agree to mediate with
20 Plaintiff in the Derivative Litigation at or about the same time. The Parties further agree that
21 Defendants shall inform Plaintiff promptly upon the scheduling of any mediation or settlement
22 negotiation with any other derivative plaintiffs who have asserted claims substantially similar to the
23 claims asserted by Plaintiff herein, and shall include Plaintiff in any such mediation or settlement
24 negotiation.

25 6. The Parties agree that notwithstanding this stay of this Derivative Litigation, Plaintiff
26 may file an amended complaint; however, Defendants need not answer or otherwise respond to the
27 Complaint or to any other complaint or amended complaint that is filed in or consolidated with the
28 above-captioned action during the pendency of this stay.

7. In the event that Defendants agree to produce, or any of them are ordered to produce by a court of competent jurisdiction, any documents in the Securities Litigation or in any related derivative litigation, or pursuant to any shareholder demand for an inspection of books and records on behalf of Affirm, then copies of such documents shall be provided to Counsel for Plaintiff within ten (10) days of such production, subject to the execution by Plaintiff of a reasonable confidentiality agreement governing the use and disclosure of these materials.

8. Upon occurrence of any of (1) the dismissal of the Securities Litigation, with prejudice, by the court, and exhaustion of all appeals related thereto; or (2) the denial of any motion to dismiss the Securities Litigation in whole or in part; or (3) either of the Parties to this Stipulation has given a ten (10) day notice that they no longer consent to the voluntary stay of the Derivative Litigation, then within seven (7) days of the occurrence of any such event or the expiration of the 10-day notice period, counsel for the parties shall meet and confer and jointly submit a proposed schedule for the filing of an amended complaint, if any, and Defendants' response thereto, and all associated briefing. Defendants are not otherwise required to move, answer, or otherwise respond to any complaint.

9. In the event that Defendants agree to terms or conditions in connection with any stipulation, agreement, or motion to stay a related derivative action that are more favorable to the plaintiff(s) therein, those more favorable terms or conditions shall be deemed incorporated into this stipulation.

10. The parties to this Derivative Action are not waiving any rights, claims, or defenses of any kind, and no part of this stipulation shall be construed as a waiver of any rights, claims, or defenses.

Dated: June 6, 2022

MAGNANIMO DEAN LAW, APC

By: Lauren A. Dean
Lauren A. Dean, Esq. (SBN 174722)
5850 Canoga Avenue, Suite 400
Woodland Hills, CA 91367
Tel: (818) 305-3450
Email: lauren@magdeanlaw.com

1 Thomas J. McKenna
2 Gregory M. Egleston
3 **GAINEY McKENNA & EGESTON**
4 501 Fifth Avenue, 19th Floor
5 New York, NY 10017
6 Phone: (212) 983-1300
7 Fax: (212) 983-0383
8 Email: tjmckenna@gme-law.com
9 Email: gegleston@gme-aw.com

10 *Attorneys for Plaintiff*

11 **GIBSON DUNN & CRUTCHER LLP**

12 By: Michael D. Celio
13 Michael D. Celio
14 mcelio@gibsondunn.com
15 Jayvan E. Mitchell
16 jmmitchell@gibsondunn.com
17 GIBSON, DUNN & CRUTCHER LLP
18 1881 Page Mill Road
19 Palo Alto, CA 94304-1211
20 Telephone: (650) 849-5300
21 Facsimile: (650) 849-5333

22 Monica K. Loseman
23 1801 California Street
24 Denver, CO 80202-2642
25 Telephone (303) 298-5784
26 Fax: (303) 313.2828
27 Email: Mloseman@gibsondunn.com

28 *Attorneys for Defendants*

FILER'S ATTESTATION

Pursuant to Civil L.R. 5-1(h)(3) regarding signatures, I hereby attest that concurrence in the filing of the document has been obtained from all of the signatories above.

Date: June 6, 2022

/s/ Michael D. Celio

Michael D. Celio

* * *

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Date: June 10, 2022

HONORABLE

